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REMARKS

1. Claim Status

After entering the amendments, claims 1 and 3-27 will be pending and under consideration. Claim 2 is canceled. Claims 28-30 are withdrawn.

2. Claim Amendments

Claim 1 has been amended to incorporate the step recited within claim 2. Claims 3 and 15, which formerly depended from claim 2, have been amended to depend from claim 1. Claims 22, 23, 25, and 26 have been amended to identify the proper step in amended claim 1.

Claim 3 has been further amended to stipulate "removing the oxygen scavenger from the container prior to step c)." Support for this amendment to claim 3 can be found throughout pages 11 and 12 of the specification as filed.

Claim 8 has been amended to state "the container for storing the oxygen scavenger of step a) comprises an oxygen scavenger." Support for the amendment to claim 8 can be found on page 16, lines 14-16, of the specification as filed.

Claim 11 has been amended to correct an inadvertent spelling error.

Applicants believe that no new matter has been introduced by the amendments made herein.

3. Oath/Declaration

Filed herewith are new declarations for the pending application. The new declarations appropriately provide that the patent application claims priority to United States Provisional Patent Application 60/418,654.

4. Priority

Applicants acknowledge and traverse the opinion that the effective filing date for the pending claims is deemed to be October 10, 2003. Applicants respectfully submit that Provisional Application 60/418,654 clearly discloses steps of independent claim 1 at page 3, lines 14 - 21. Applicants further submit that claim 3, and all of its dependents, finds support throughout Provisional Application 60/418,654. Applicants kindly request that the opinion stating that "the effective date of all the pending claims is deemed to be 10/10/2003" be withdrawn.

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5. 35 U.S.C. § 112 Claim Rejections

Claims 2-15, 22 and 25 have been rejected under 35 U.S.C. § 112, second paragraph. Specifically, page 4 of the Office Action dated June 7, 2006, ("Office Action") states that "[d]ependent claim 2 is totally indefinite to what is meant by: 'c) storing the oxygen scavenger" as this does not define "the metes and bounds of the scope of the word 'storing." Applicants respectfully traverse the 35 U.S.C. § 112, second paragraph, rejection of the pending claims.

Applicants respectfully submit that "the words of a claim must be given their 'plain meaning' unless such meaning is inconsistent with the specification." MPEP 2111.01 I. The MPEP and the courts have further held that "plain meaning" refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art and that dictionary definitions may be used to determine the "ordinary and customary meaning" of the words used in a claim. MPEP 2111.01 III; Phillips v. AWH Corp., 415 F.3d 1303, 1313, 75 USPQ2d 1321, 1326 (Fed. Cir. 2005) (en bane); Sunrace Roots Enter. Co. v. SRAM Corp., 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003); Ferguson Beauregard/Logic Controls v. Mega Systems, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003); ACTV, Inc. v. The Walt Disney Company, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003); Phillips v. AWH Corp., 415 F.3d at 1314, 75 USPQ2d at 1327; Brookhill-Wilk 1, 334 F. 3d at 1300, 67 USPQ2d at 1137; Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998).

The word "storing" is a gerund of the verb "to store." Applicants respectfully submit that the standard dictionary definitions of the verb "to store" indicates that something is stocked (or alternatively, accumulated, collected, gathered, or deposited in a storehouse, warehouse or other place for keeping) for future use. See Webster's Ninth New Collegiate Dictionary published in 1987 (see attachment); http://dictionary.reference.com/browse/store; and/or http://dictionary.reference.com/browse/store; and/or http://www.webster.com/dictionary/store. Applying this standard dictionary definition to claim 2 (which by amendment has been incorporated into independent claim 1) suggests that "the oxygen scavenger of step a)" is stored, that is to say stocked (or alternatively, accumulated, collected, gathered, or deposited in a storehouse, warehouse or other place for keeping) for future use. In light of said standard dictionary definition, one of ordinary skill in the art would clearly recognize the "metes and bounds" of the claims. Consequently, the claims are definite. Applicants, respectfully request that the 35 U.S.C. § 112, second paragraph, rejection of the pending claims be withdrawn.

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Additionally, page 4 of the Office Action stated that "applicant's specification only discloses storing the oxygen scavenger in a container." Applicants respectfully disagree with this characterization of the specification and kindly point out that page 14, lines 11-14, of the specification provides that the oxygen scavenger subjected "to an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" may not require a container at all. Consequently, the specification provides support for claims regardless of whether the oxygen scavenger subjected "to an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" is stored in a container or not stored in a container.

Claim 3 has been rejected under 35 U.S.C. § 112, second paragraph. Specifically, page 4 of the Office Action stated that "[d]ependent claim 3 is indefinite because the limitation of this claim of 'storing the oxygen scavenger in a container' makes step b) of independent claim, from which claim 3 indirectly depends, indefinite." Specifically, the Office Action questions whether step b) is "performed inside the container" or whether "the oxygen scavenging material first removed from the container before it is subjected to the final does [sic] of radiation."

Applicants respectfully disagree with the 35 U.S.C. § 112 rejection of claim 3. However, to advance the prosecution of this patent application and to more distinctly claim the subject matter which the Applicants regard as their invention, claim 3 has been amended to stipulate <u>"removing the oxygen scavenger from the container prior to step e)."</u> Consequently, the proffered point of indefiniteness is now moot. Applicants respectfully request that the 35 U.S.C. § 112, second paragraph, rejection of claim 3 be withdrawn.

6. Claim Objections

Claim 8 was objected to "as being of improper dependent form for failing to further limit the subject matter of a previous claim." Applicants respectfully disagree with the analysis of claim 8. However, to advance the prosecution of this patent application and to more distinctly claim the subject matter which the Applicants regard as their invention, claim 8 has been amended to recite that the "the container <u>for storing the oxygen scavenger of step a)</u> comprises an oxygen scavenger." Applicants respectfully request that the objection to claim 8 be withdrawn.

7. 35 U.S.C. § 102 and 103 Claim Rejections

Claims 1-2, 15-21, 23-24, and 26-27 stand rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious in light of Becraft et al. (U.S. Patent Number 5,911,910 - "Becraft") or Luthra et al. (U.S. Patent Number 6,287,481 - "Luthra"). Claims 1-2, 15-21, 23-24, and 26-27 further stand rejected under 35 U.S.C. § 102(e) as anticipated by Cook, Jr. et al. (U.S.

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Patent Number 6,449,923 - "Cook"). Page 7 of the Office Action asserts that Becraft or Luthra "both directly disclose exposing the oxygen scavenger to actinic radiation in a stepwise process wherein the film is exposed to a plurality of discrete periods of time" and that "it should be clear that it is not until the forth [sic] exposure step that the oxygen scavenger becomes fully triggered" Page 8 of the Office Action asserts that Cook teaches "a method for triggering an oxygen scavenging composition . . . [by] exposing the composition to a source of pulsed light . . . to provide a triggered composition," and that "it should be clear that it is not until the final pulsed exposure step that the oxygen scavenger becomes fully triggered" Applicants respectfully traverse the rejections of pending claims 1, 15-21, 23-24, and 26-27 under 35 U.S.C. § 102(b) over Becraft or Luthra, 35 U.S.C. § 103(a) over Becraft or Luthra, and 35 U.S.C. § 102(c) over Cook.

MPEP § 2131 states that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Additionally, MPEP § 2142 stipulates that three basic criteria must be met to establish a *prima facie* case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Applicants submit that neither Becraft, Luthra, nor Cook expressly or inherently teach the steps of claim 1 and thus do not anticipate the pending claims. Additionally, neither Becraft nor Cook, singly or in combination, establish a *prima facie* case of obviousness as neither reference, singly or in combination teach or suggest the steps of claim 1 and thus do not obviate the pending claims. Specifically, Becraft, Luthra, or Cook do not anticipate nor obviate (singly or in combination) a method including the step of "storing the oxygen scavenger" which has been subjected "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger."

Becraft, Luthra, and Cook clearly take an oxygen scavenger and expose the oxygen scavenger to actinic radiation in multiple discrete doses with each dose having a discrete period of time. However, contrary to the characterization of the Office Action, the continuous processes of Becraft, Luthra, and Cook do not "store," that is to say stock (or alternatively, accumulate, collect, gather, or deposit in a storehouse, warehouse or other place for keeping) for future use, an oxygen scavenger subjected to "an

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initial dose of actinic radiation insufficient to trigger the oxygen scavenger" (emphasis added). Within the processes of Becraft, Luthra, and Cook, the oxygen scavenger subjected to "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" only exists as an intermediate in the continuous process of dosing the oxygen scavenger with actinic radiation to produce a triggered oxygen scavenger. Consequently, the oxygen scavenger subjected to "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" is not "stored," that is to say stocked (or alternatively, accumulated, collected, gathered, or deposited in a storehouse, warehouse or other place for keeping) for future use. Furthermore, Becraft, Luthra, nor Cook mention storing, that is to say stocking (or alternatively, accumulating, collecting, gathering, or depositing in a storehouse, warehouse or other place for keeping) for future use, an oxygen scavenger subjected to "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" as one of ordinary skill in the art would ascribe to the standard dictionary definition of the word "store." Becraft, Luthra, and Cook only teach producing and storing, that is to say stocking (or alternatively, accumulating, collecting, gathering, or depositing in a storehouse, warehouse or other place for keeping) for future use, a fully triggered oxygen scavenger. See Becraft, column 7, line 37, bridging column 8, line 8; Luthra, column 5, line 45, bridging column 6, line 19; Cook, column 4, lines 50-63.

In light of the comments presented herein, Applicants respectfully submit that Becraft, Luthra, or Cook do not explicitly or inherently describe "storing the oxygen scavenger" which has been subjected "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger." Applicants respectfully request that the 35 U.S.C. § 102(b) rejections of the pending claims in view of Becraft or Luthra be withdrawn and the 35 U.S.C. § 102(e) rejections of the pending claims 1, 15-21, 23-24, and 26-27 in view of Cook be withdrawn.

In light of the comments made herein, Applicants respectfully submit that neither Becraft nor Luthra, singly or in combination, teach or suggest the step of "storing the oxygen scavenger" which has been subjected "an initial dose of actinic radiation insufficient to trigger the oxygen scavenger" as required to establish a *prima facie* case of obviousness. Applicants respectfully request that the 35 U.S.C. § 103(a) rejections of the pending claims 1, 15-21, 23-24, and 26-27 in view of Becraft or Luthra, singly or in combination, be withdrawn.

8. Final Remarks

In commenting upon the cited references and the pending claims, certain details of distinction between the cited references and the pending claims have been mentioned to facilitate a better

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understanding of the claimed invention. The unclaimed distinctions are not intended to create any implied limitations in the claims. Additionally, not all distinctions between the cited references and Applicants' present invention have been presented by the Applicants. Applicants reserve the right to submit additional evidence demonstrating that Applicants' invention is novel and nonobvious in view of the prior art.

The foregoing remarks are intended to assist the Examiner in re-examining the application and, in the course of explanation, may employ shortened, more specific, or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims. The actual claim language should be considered in each case. Furthermore, the remarks only represent certain advantageous features and differences between the pending claims and the cited references that Applicants' attorney chooses to mention at this time. The remarks should not be considered exhaustive to all features which render the invention patentable.

Reconsideration of the pending claims is respectfully requested. In view of the foregoing, Applicants respectfully submit that the pending claims under consideration, claims 1 and 3-27, are in condition for allowance and respectfully request the issuance of a Notice of Allowance. The Examiner is invited to contact the undersigned patent attorney at (832) 813-4339 with any questions, comments or suggestions relating to the referenced patent application.

Date: January

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Respectfully submitted,

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ATTORNEY FOR APPLICANTS

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